

Agency Survey Responses: Environmental Response & Remediation

NATURAL RESOURCES, AGRICULTURE AND ENVIRONMENTAL QUALITY APPROPRIATIONS SUBCOMMITTEE
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ISSUE BRIEF

1. What are the statutory requirements?

- UCA 19-1-101 Department of Environmental Quality
- UCA 19-6-301 Hazardous Substances Mitigation Act
- UCA 19-6-401 Underground Storage Tank Act
- UCA 19-6-901 Illegal Drug Operations Site Reporting and Decontamination Act
- UCA 19-8 Voluntary Cleanup Program (as designated by the Executive Director)
- UCA 19-10 Environmental Institutional Control Act (as designated by the Executive Director)
- 40 CFR Part 300 Subpart F
- a. *Should the statute/scope of the entity be adjusted?*
 - The UST Act was recently amended to include regulation of certain Above Ground Storage Tanks.
 - There is no state counterpart to the Federal Superfund Statute, but states are afforded “substantial and meaningful involvement”.
 - The Hazardous Substances Mitigation Act has been amended to add tools such as Enforceable Written Assurances (UCA 19-6-326).
- b. *Does each program have a mission, goals, and objectives that are meaningful and tied to the enabling statute? What are they?*

The Division has a defined mission which supports the Department mission. The mission of DERR is protecting public health and Utah’s environment through cleaning up chemically contaminated sites, ensuring that underground storage tanks are managed and used properly, and by providing chemical usage and emission data to the public and local response agencies. Programs administered by the Division have specific goals and objectives, and metrics to demonstrate accomplishment of statutory requirements and achieving regulatory outcomes.

Major program metrics are our COBI measures which are reviewed annually:

<https://cobi.utah.gov/2021/366/performance>

- COBI Measure 1: Percent of UST facilities meeting the EPA combined performance measure for compliance at time of inspection, or in compliance within 60 days of inspection. FY2021 Goal: 70%
- COBI Measure 2: Leaking Underground Storage Tank (LUST) release sites cleaned-up and closed. FY2021 Goal: 85
- COBI Measure 3: Issued Brownfields tools to facilitate cleanup and redevelopment of impaired. FY2021 Goal: 20

DERR also tracks many other program metrics in support of our mission in a Monthly Balanced Scorecard, which includes:

UST Program

- Compliance Inspections Completed
- Technical Compliance Rate at Inspection
- Number of New LUST Releases Opened
- Number of LUST Sites (releases) Closed
- Number of PST Claims Paid
- Total \$ Amount of PST Claims Paid

- LUST Site Visits
- Petroleum Brownfields Assessments

CERCLA Program

- EPA Coordinated CERCLA Milestones
- EPA Coordinated O&M Milestones
- DoD Coordinated Milestones
- DOD Coordinated O&M Milestones
- Site Discoveries
- Preliminary Assessments
- Work Plans
- Site Inspections
- No further action decisions
- Emergency Notifications Reported/Managed

Voluntary Cleanup Projects/Brownfields

- VCP Certificates of Completion or NFAs Issued
- Enforceable Written Assurances Issued
- Targeted Brownfields Assessments (DERR/EPA)
- Post Remediation Site Follow-up
- VCP Site visits

Other

- GRAMA Requests Received and Processed
- Document Downloads via Interactive Map

- c. *How could the organizational structure be improved to achieve stated objectives? (Referring to programs within this line item, line items within the Department, and other line items in the executive branch.)*

Over time, the organizational structure of the division has been modified based on changing **workloads** and program needs. For example, several years ago, the Federal Facilities section was consolidated with the Remedial Action section in the CERCLA Branch into the NPL/Federal Facilities Section. As **workloads** change, the division reviews the organizational structure, including FTEs, and modifies accordingly.

2. How well has this “investment” performed in the past? What are the goals for the future?

- a. *What value does this division/program add to society?*

What is the value of clean land, air, and water? The programs administered by the division protect human health and the environment through prevention and compliance inspections and the cleanup of land and water resources (both surface and ground water); with an eye on potential future land use to help return blighted, contaminated properties back to beneficial reuse.

- b. *Are there meaningful performance measures?* Yes.

- i. *How well do they tie to the organization’s mission, goals, and objectives?*

Fairly directly, as we track numbers of facilities regulated; releases; site closures/cleanup completions; federal Superfund site milestones met; etc.

- ii. *Are the targets reasonable? Are the results acceptable?*

Yes, and yes. Some of our metrics are not entirely under our control (such as VCP applications received, completions, etc.) and are tied to economic conditions. However, we strive to move sites through to completion working closely with the applicant to meet their needs and schedule.

iii. *Are there standards (industry, national, etc.) for output or output per unit of input? How do they compare to this program's results?*

N/A.

c. *What data is collected/reported to document/demonstrate progress toward the outcomes?*

- Analytical data is collected to demonstrate successful cleanup.
- Milestones achieved, including sites closed, cleaned up, new sites discovered/opened are tracked.
- Compliance rates demonstrate prevention efforts (for UST releases), etc.

d. *What decisions does the Department, Division or Program make based on performance and other collected data?*

Need for regulatory program changes based on trends (AST addition to UST Act fits into this category); resource allocations and work prioritization for planning (higher risk vs. lower risk for resource allocation), just to name a couple.

3. What programs should be funded for the upcoming fiscal year? At what level?

All current program and appropriations should be funded for FY 2021 and FY 2022 at current levels. There may be a need for additional appropriations for incorporating and managing Above Ground Storage Tanks as we develop rules per recent legislative additions to the UST Act. To maintain the current level of service to the regulated community and to meet EPA milestones, the existing level of funding should be maintained. During the Covid-19 pandemic, DERR funding was reduced by \$73,100. With coming out of the pandemic, if possible, restoration of those funds would allow for the division to engage with EPA on removal actions more meaningfully as EPA is again traveling to conduct removal actions.

a. *Why is state government providing these services? Could this function be performed by a local government or the private sector?*

The statutory responsibility for the programs we implement have been placed at the state executive branch level. We do partner and contract some UST work to local health jurisdictions that are interested. Superfund involvement is specific to states.

b. *What will happen if the division/program is eliminated or downsized?*

i. *Who will notice?*

UST owners/operators

Adjacent property owners impacted by releases

EPA for UST State Program Approval

Superfund is often the remedy of last resort for vexing environmental problems. Those impacted by hazardous substances from current or historic practices will notice if the regulatory remedy is eliminated.

ii. *Who will be affected the most?*

The Voluntary Cleanup Program and Brownfields tools such as Enforceable Written Assurances, Targeted Brownfields Assessments, etc., if eliminated, removes tools that have become important to prospective property purchasers, lenders on projects, and developers seeking solutions to environmental liability concerns. The division with its programs and tools, helps eliminate barriers to such solutions.

c. *Can the taxpayers' investment be reduced by implementing or increasing user fees?*

Likely not significantly. We already have fees set for the cost of providing certain services to those benefiting directly.

d. *Should the funding mix be adjusted?*

No, however with decreasing federal dollars being allocated through grants and cooperative agreements to states, in order to continue the same level of involvement in the federal Superfund program sites in Utah,

there may need come a time for an increase in state funding for implementing the state role. Currently, the DERR funding breakdown is as follows (generally, with slight variations year-to-year):

- State General Funds = 10%
- Federal Funding = 56%
- Dedicated Credits = 8%
- Restricted Accounts = 25%

e. Are any previously awarded building blocks no longer a high priority?

No. What will become a high priority in out years (3-5) is a funding stream for the HSMA Fund to ensure state cost share obligations at Federal Superfund Fund-lead sites and ongoing long-term Operations and Maintenance obligations are able to be met and fulfilled.

f. How can some of the expenditures be reduced or eliminated?

DERR's funding to some extent, is already variable dependent upon federal monies allocated to Superfund projects within Region 8 and Utah. Elimination or reductions of either appropriations for the UST program, or state general funds for Environmental Response coordination with EPA or managing the Environmental Incident Notification Process for DEQ would result in elimination of providing services others rely on for protection of public health and the environment in working with EPA to address Utah concerns.

g. Is the availability of funding (either grants or previous building blocks) driving expenditures, rather than mission or objective?

To some extent, as we cannot spend what we have not been appropriated. We strive to strategically plan for accomplishing our mission and objectives (defined in part in statute) and the work needed to meet accomplish that work drives our grant applications (in the case of Superfund and Brownfields) and our budget appropriation requests (such as for our UST program) to ensure the necessary work gets performed to achieve our mission and objectives. EPA grants are tied to proposed and scheduled work with designated milestones and objectives. Other federal funds (DoD, DOE) are reimbursed costs to the state for service provided in our role of state oversight.